IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 516 OF 1995

1. Eknath Shivaji Patil,
   Age 23 years,

2. Shiva Dadu Patil,
   Age 55 years,

3. Krishna Shiva Patil,
   Age 28 years,

4. Ananda Dattu Gurav,
   Age 60 years,

5. Sampat Vithal Kumbhar,
   Age 29 years,

6. Raghunath Rama Patil,
   Age 32 years,

   All R/o village Bachani,
   Taluka Karvir,
   District Kolhapur.

7. Dagadu @ Ananda Kerba
   Koigade, Age 32 years,
   R/o. Kurkuli, Tq. Karvir,
   District Kolhapur ...Appellant

Versus

The State of Maharashtra ...Respondent.

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Shri. N.J. Patil, Advocate for the appellants.

Shri. A.S. Shitole, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 9/10TH DECEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellants i.e. original accused Nos. 1 to 7 challenge the judgment and order dated 30.8.1995 passed by the III Additional Sessions Judge, Kolhapur in Sessions Case No. 251 of 1991. By the said judgment and order, the learned Sessions Judge convicted all the appellants for the offence under Section 313 r.w. 34 of I.P.C. and under section 506 r.w. 34 of I.P.C. and sentenced them to R.I. for one year and to pay fine of Rs.1,000/- each i/d S.I. for three months under section 313 r.w. 34 of I.P.C. and under section 506 r.w. 34 of I.P.C. sentenced them to R.I. for six months and to pay a fine of Rs.1000/- each i/d R.I. for one month each. In addition thereto, the learned Sessions Judge convicted the appellant No.4 for the offence under section 419 of I.P.C. and sentenced him to R.I. for one year and to pay fine of Rs.2,000/- i/d S.I. for six months

2. Brief facts relating to the present case are as under:-

. The complainant P.W.1 Mangal Bhiva Jadhav was residing in village Bachani alongwith her parents, brother and sister. The appellant No.1 was her distant relation. He was also residing in the same village. The field of Mangal and that of the

appellant No.1 were adjoining. About four months prior to the filing of the complaint, Mangal had gone to her field, there the appellant No.1 committed rape on her. Thereafter, whenever Mangal went to her field, the appellant No.1 had sexual intercourse with her. This happened about four to five times. Mangal became pregnant and she insisted that the appellant No.1 should marry with her. On 7.3.91 there was a marriage of cousin brother of Mangal i.e. the son of Shankar Jadhav in the village. All family members had gone to attend the said marriage. Only Mangal and her uncle P.W.4 Shiva Jadhav remained at their house. At about 4.00 p.m. appellant No.5 Sampat Kumbhar came to her house in a jeep and told that he was sent by appellant No.1. Appellant No.5 stated that the appellant No.1 has sent him to bring her saying that Mangal and appellant No.1 were to get married at Narsobachiwadi. Mangal asked her uncle P.W.4 Shiva Jadhav to accompany her and he accompanied them. The jeep went to village Haladi, there appellant Nos. 1 to 3 and 7 were present, they got into the jeep. From there the jeep proceeded to Kolhapur. The jeep stopped near a hospital. Appellant No.4 and 6 were sitting on the steps of the hospital. Uncle of Mangal P.W.4 Shiva Jadhav was given threat and was made to sit in the jeep. P.W.1 Mangal was taken into the hospital by all the

appellants. P.W.2 Dr. Jadhav gave injection to Mangal due to which she became unconscious. When she regained consciousness, she found that her pregnancy had been terminated. It is the case of Mangal that the appellants caused miscarriage without her consent and when she was taken to the hospital she did not know that her pregnancy was to be terminated. Thereafter on 2.4.91 her complaint came to be lodged against all the appellants. The complaint was under Section 376 of I.P.C. against the appellant No.1 who committed rape on her and under Section 313 r.w. 34 of I.P.C. against all appellants. After completion of investigation, charge sheet came to be filed under Section 376, 313 and 506 r.w. 34 of I.P.C. and under Section 416 of I.P.C. Charge under Section 416 of I.P.C. was added as it is the prosecution case that the appellant No.4 has signed on consent form in Doctor Jadhav's hospital pretending to be Shiva Rama Jadhav who is the paternal uncle of Mangal.

3. In due course the case was committed to the Court of Sessions. Charge came to be framed against all the appellants for the offence under Section 313 r.w. 34 of I.P.C. In addition thereto the charge came to be framed against the appellant No.1 Eknath Patil for the offence under section 376 of I.P.C. So also an additional charge came to be

framed against the appellant No.4 Anand Gurav for the offence under Section 419 of I.P.C. All the appellants pleaded not guilty to the said charges and claimed to be tried. After going through the evidence adduced by the prosecution, the learned Sessions Judge acquitted the appellant No.1 Eknath Patil for the offence under Section 376 of I.P.C. The learned Sessions Judge held that the act of sexual intercourse had taken place by consent and it was not a case of rape. However, the learned Sessions Judge convicted and sentenced all the appellants as stated in para 1 above. Hence, this appeal.

4. I have heard Shri. N.J. Patil, the learned advocate for the appellants and Shri. Shitole, the learned A.P.P. for the State. I have also perused the entire record pertaining to the present case. After carefully considering the matter, I am of the opinion that the conviction of all the appellants under Section 313 r.w. 34 of I.P.C. deserves to be set aside.

5. The main witness in the present case is P.W.1 Mangal Jadhav. As the prosecution story in para 2 above has been taken from the examination in chief of Mangal Jadhav, I do not find it necessary to repeat the same here, as it would only overburden

the judgment. The evidence of P.W.4 Shiva Jadhav in his examination in chief in respect of incident of 7.3.91 is on the same lines as that of Mangal. The learned Sessions Judge has disbelieved the case of Mangal Jadhav that the appellant No.1 Eknath Jadhav had committed rape on her on five to six occasions. The learned Sessions Judge held that the sexual intercourse had taken place with consent. Moreover, Mangal was over 18 years of age at the time of incident, hence, it was not even a case of statutory rape. However, the learned Sessions Judge held on the basis of evidence of P.W.1 Mangal Jadhav and P.W.4 Shiva Jadhav that all the appellants are guilty of the offence under Section 313 r.w. 34 of I.P.C. In such case, it would necessary to scrutinise the evidence of these two witnesses minutely.

6. P.W.1 Mangal Jadhav was about three and half months pregnant on the date when her pregnancy was terminated i.e. on 7.3.91. On that day there was a marriage in the village of her paternal uncle’s son i.e. son of Shankar Jadhav. Mangal had three paternal uncles i.e. P.W.4 Shiva, Shankar and Dinkar. However, Mangal did not attend the marriage and according to her she and her uncle Shiva stayed at home. When the appellant No.5 came to her house in a jeep and told her that the

appellant No.1 has sent him to fetch Mangal to get married with appellant No.1 at that time Mangal asked her uncle P.W.4 Shiva Jadhav to accompany her and she and her uncle both went in the jeep with appellant No.5. Mangal made no effort to call her parents, brother and sister though she was going to get married on that day. Though it was such an important step, neither Mangal nor her uncle P.W.4 Shiva felt it necessary to inform the other family members that Mangal was getting married and hence they should come to attend the marriage. On the very same day there was marriage in the village of the son of Shankar Jadhav who is one of the paternal uncles of Mangal. The said marriage was to take place at 5.00 p.m., the appellant No.5 came to the house of Mangal at about 4.00 p.m. The appellant No.1 was the son of brother-in-law of Dinkar Jadhav who is one of the paternal uncles of P.W.1 Mangal. When the marriage of son of Shankar was to take place, on that very day P.W.4 Shiva Jadhav could very well have informed the appellant No.1 that in the same pandal they could get Mangal married to appellant No.1. However, P.W.4 Shiva states that Mangal’s parents were at the marriage place of son of Shankar and he did not feel that he should take Mangal’s parents with them. Nor did he feel that it was necessary to inform parents of Mangal in respect of the marriage of Mangal with

appellant No.1. He also stated that he did not feel it necessary to inform the parents of Mangal that they were going to Narsobachi Wadi for performing the marriage of Mangal with the appellant No.1. According to him Mangal asked him to accompany her when she was going to get married with the appellant No.1, hence, he accompanied her. This conduct on the part of P.W.4 Shiva Jadhav is most unnatural conduct. The said conduct is not at all consistent with that of a normal person when his niece is to get married. This conduct is more consistent with the fact that Mangal was being taken for terminating her pregnancy and that Mangal asked him to accompany her.

7. So also the conduct of Mangal herself is not a natural and probable conduct. It is not the case of Mangal that her family was against her marriage with the appellant No.1. In such case if she received message from appellant No.1 calling her to get married with him on that day, she would have certainly informed her parents, brother and sister. However, she has stated in her evidence that she did not feel it necessary to do so. This conduct on her part shows that she was in fact being taken to terminate her pregnancy and this fact was known to her. Otherwise, there was no reason for her to suppress from her parents and other relatives the

fact that she was going away with the appellant No.5 to Narsobachiwadi to get married with the appellant No.1.

8. The conduct of P.W.4 Shiva Jadhav who is the uncle of P.W.1 Mangal is consistent with the fact that he knew that Mangal was being taken to terminate her pregnancy. No doubt, this witness has stated that when they reached the hospital at Kolhapur, the appellants took Mangal inside the hospital and threatened him to keep mum otherwise they would kill him there only, hence, he remained sitting in the jeep. According to this witness as well as Mangal, all the appellants were in the hospital. None of the appellants remained sitting in the jeep or next to the jeep where P.W.4 Shiva Jadhav was sitting. According to P.W.4 Shiva Jadhav the road in front of the hospital was a vehicular road and he remained sitting in the jeep for about three hours. When Mangal was taken to the hospital for causing her miscarriage, according to P.W.4 Shiva Jadhav during those three hours, he was sitting quietly in the jeep and during those three hours he did not feel like going in the hospital and seeing Mangal who was in the hospital. The story put forth by P.W.4 Shiva is that he remained in the jeep for three hours when the appellants went in the hospital alongwith Mangal.

At that time as he was alone in the jeep he could have sought the help of police or the help of any of the passer by. However, he did not do so. This clearly shows that he knew the reason for which Mangal was taken to the hospital from the beginning and he had no objection to the pregnancy being terminated.

9. P.W.4 Shiva Jadhav has stated that after a long time the appellants came out, at that time Mangal was not with them. Thereafter the appellants reached him to the door of his house. In case the appellants had done the act of getting the pregnancy terminated forcibly, they would not have had the courage to go back to the village with Shiva and to drop him at his house. It has also come on record that the family of Mangal was in the majority in the village.

10. Even according to Mangal as well as P.W.2 Dr. Jadhav, Mangal remained in the hospital upto 9.3.91. P.W.4 Shiva has stated that after he returned, the family members and other brothers of Shiva did not ask him about Mangal. Nor did Shiva tell anyone about this incident till arrival of Mangal. Even according to Mangal after her uncle was reached to his house, she was in the hospital, she was in the hospital for two days thereafter and

nobody came to the hospital from her house to see Mangal and it was the appellant No.1 who was present in the hospital during that time. If at all the pregnancy of Mangal was terminated without her consent, when P.W.4 Shiva Jadhav was reached at his house by the appellants, he could have gathered all the family members and could have told them about the incident. He has stated that their family i.e. Jadhav family was in the majority in village Bachani. In such case he would have gathered all the families in the village who were his relations and they could have gone to the hospital to see Mangal or taken any action against the appellants. However, P.W.4 Shiva Jadhav has categorically admitted that he reached home about 7.00 to 8.00 p.m. on 7.3.91 and when the other family members returned in the village from the marriage, he did not tell about the incident to anybody. Even on the next day he did not tell anybody about the incident. In fact till the arrival of Mangal he did not tell about the incident to anybody. He has further stated that no family member made any eqnuiry with him about Mangal. Shiva and Mangal were the only two persons in the house, in such case if Mangal is found missing, the first thing the family members would do, is to make enquiries with Shiva about Mangal. It is very strange and unnatural that a young

unmarried girl aged about 18 to 20 years, is missing from her house for over two days and no family member makes any enquiry or makes any search for her. All these facts lead only to one conclusion, i.e. the family members of Mangal knew that she was pregnant and she had gone to terminate her pregnancy.

11. Mangal has stated that on 9.3.91 she was reached to her house by the accused. If at all the appellants had done something without the consent of Mangal i.e. they had got terminated her pregnancy forcibly and without her consent, the accused would not have reached Mangal to her house. Mangal has clearly stated in her cross examination that the appellant No.3 Krishna Patil took her from the hospital and reached her home. As stated earlier none of the family members had shown any anxiety regarding disappearance of Mangal. This shows that they knew that Mangal had gone to get her pregnancy terminated and therefore, they kept quiet.

12. The conduct of P.W.1 Mangal is also to be seen. Mangal has stated that when she returned home she did not tell anybody that her miscarriage was caused. She has no talk with her uncle Shiva though her uncle Shiva and she were residing in the

same house. It is also pertinent to note that the incident of termination of pregnancy took place on 7.3.91, however, the complaint came to be lodged almost a month later i.e. on 2.4.91. P.W.4 Shiva Jadhav has stated that he did not tell anyone about the incident after returning home and it is only for the first time that he told about the incident when his statement came to be recorded by the police on 2.4.91. So also no complaint was lodged by Mangal prior to 2.4.91. No plausible explanation has come on record regarding the delay in lodging the complaint. Thus, this delay in lodging the complaint is also fatal to the prosecution. The evidence as regards the offence under section 313 of I.P.C. is based only on the evidence of these two witnesses. Looking to the evidence of P.W.1 Mangal and P.W.4 Shiva Jadhav, I do not find their evidence to be reliable and trustworthy.

13. Now only one point remains for consideration i.e. the conviction of appellant No.4 for the offence under Section 419 of I.P.C. It is the prosecution case that when Mangal was taken to the hospital, appellant No.4 Ananda Gurav impersonated himself to be Shiva Rama Jadhav i.e. the paternal uncle of P.W.1 Mangal Jadhav. The appellant No.4 represented himself to be the paternal uncle of

Mangal and had signed on the consent form (Exh.27) inthe hospital. P.W.2 Dr. Jadhav who performed the operation on Mangal on 7.3.91 has identified the appellant No.4 Ananda Gurav to be the person who signed on the consent form (Exh.27) as Shiva Rama Jadhav. P.W.2 Dr. Jadhav has stated that the appellant No.4 Ananda Gurav represented himself to be the paternal uncle of Mangal. Dr. Jadhav is an independent witness. He has no grudge or enmity against the appellant No.4 so as to implicate him falsely. Moreover, the prosecution has examined P.W.11 Jaysingrao Landge who is the handwriting expert. He has stated that he examined the questioned documents Q-1 and he found it tallied with specimen i.e. S-8 to S-14 (Exh.43 to 49). He has also stated that he compared Q-1 (Exh.27) with the specimens i.e. S-1 to S-7 (Exh. 32 to 38) and found that they did not tally. It is pertinent to note that S-8 to S-14 are specimens in writing of appellant No.4 and S-1 to S-7 are those of P.W.4 Shiva Rama Jadhav. Nothing has been elicited in the cross examination of this witness i.e. the hand writing expert so as to disbelieve his testimony that the questioned documents (Exh.27) was in the hand writing of appellant No.4. Looking to the evidence on record it can very well be stated that the prosecution has proved its case under section 419 of I.P.C. against the appellant

No.4. Hence, the conviction of the appellant No.4 for the offence under section 419 of I.P.C. deserves to be confirmed.

14. At this stage Shri. Patil, the learned advocate for the appellants submitted that the appellant No.4 is a poor agriculturist and his family is dependant on him. He has submitted that the incident in question has occurred in the year 1991 and more than 14 years have passed since then and about 10 years have passed since his conviction by the trial Court. Looking to all these facts, he has prayed that the sentence of imprisonment imposed on the appellant No.4 be reduced to the period undergone by him. Looking to these facts, I am inclined to reduce the sentence of imprisonment to the period undergone by the appellant, however, I am inclinedto increase the amount of fine.

15. In the result the conviction and sentence of appellant Nos. 1 to 7 under Section 313 r.w. 34 of I.P.C. is set aside. The conviction of appellant No.4 Ananda Dattu Gurav under section 419 of I.P.C. is confirmed. However, looking to the facts and circumstances of the case I am inclined to reduce the sentence of imprisonment to the period undergone by the appellant No.4, however, the fine amount is increased from Rs.2000/- to

Rs.5000/-.

16. It is submitted by the learned advocate for the appellants that the fine amount of Rs.2000/- as imposed by the trial Court has already been deposited in the trial Court. In such case the appellant No.4 would have to pay additional fine amount of Rs.3,000/- only. The learned advocate for the appellants prays for eight weeks time to deposit additional fine amount. The said prayer is accepted. The appellant No.4 is granted eight weeks time to deposit additional fine amount. The appellants are on bail. The bail bonds of appellant Nos. 1 to 3 and 5 to 7 shall stand cancelled. As far as the appellant No.4 is concerned, his bail bond shall stand cancelled after he deposits additional fine amount of Rs.3000/- in the trial Court.

17. Criminal appeal is partly allowed.